



Missouri, in which Baywood filed its state court action.

3. This action is removable pursuant to 28 U.S.C. 1441(a) because it is within the Court's jurisdiction under 28 U.S.C. § 1331, in that the Petition raises a federal question.

4. Under 28 U.S.C. § 1446(b)(1), "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based..."

5. Michaels and Mr. Reynolds received a copy of the Petition and a summons on November 17, 2016, when it was served by Plaintiff. Therefore, this removal is timely.

6. The Court has federal question jurisdiction under 28 U.S.C. § 1331, whereby "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

7. The putative class action Petition alleges that Defendants violated the Telephone Consumer Protection Act ("**TCPA**"), 47 U.S.C. § 227.

8. TCPA authorizes a "[p]rivate right of action" when a person is "otherwise permitted by laws or rules of court of a State" to bring the action. 47 U.S.C. § 227(b)(3). Despite the TCPA's grant of jurisdiction to state courts, the district court has subject matter jurisdiction over TCPA claims. *Heller v. HRB Tax Group, Inc.*, 2012 WL 163843 (E.D. Mo. Jan. 19, 2012)(citing, *Nack v. Walburg*, 2011 WL 310249, at \*4 n. 2 (E.D. Mo. Jan. 28, 2011)(reversed on other grounds by *Nack v. Walburg*, 715 F.3d 680 (8th Cir. 2013)).

9. Therefore, the Petition asserts a discrete federal question under the TCPA, over which this Court has express subject matter jurisdiction.

10. A copy of this Notice of Removal will be filed in the Circuit Court of St. Charles,

Missouri and served upon Plaintiff.

11. A civil cover sheet is attached hereto as Exhibit A.

12. Attached hereto as Exhibit B are true and accurate copies of all process, pleadings, and orders on file with the Circuit Court of St. Charles County, Missouri.

WHEREFORE, Defendants Michael's Carpet & Linoleum, Inc. d/b/a Michaels Flooring Outlet and Michael Edward Reynolds aka Mike Reynolds hereby remove this case from the Circuit Court of St. Charles, Missouri to this Court for all further proceedings, as provided by law, and request that, pursuant to 28 U.S.C. § 1446, the Circuit Court of St. Charles County, Missouri proceed no further unless and until such further order of this Court.

Respectfully submitted,

KOZENY & MCCUBBIN, L.C.



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**Attorneys for Defendants**

**Certificate of Service**

I hereby certify that on this 15th day of December, 2016, a true and correct copy of the above and foregoing document was served via United States mail, first class, postage prepaid, to the following:

Ronald J Eisenberg  
Schultz & Associates LLP  
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Chesterfield, MO 63005  
*Attorney for Plaintiff*



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